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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARCHIE COMIC PUBLICATIONS,
INC.,

Plaintiff,

v.

10 CV 8858 (RMB)

KENNETH W. PENDERS, II,

Defendant.

-----x

New York, N.Y.

May 6, 2013

10:10 a.m.

Before:

HON. RICHARD M. BERMAN,

District Judge

APPEARANCES (VIA TELEPHONE)

COLLEN IP

Attorney for Plaintiff

BY: JOSHUA PAUL, ESQ.

DAMAN, LLC

Attorney for Defendant

BY: JEFFREY K. DAMAN, ESQ.

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(Telephone conference; in chambers)

THE COURT: Counsel, are you there?

MR. PAUL: Yes, your Honor.

THE COURT: So we have a court reporter. It would be helpful for everybody to state their name before they speak, if that's okay.

So who wants to take the lead here and bring me up to date on the status of the mediation?

MR. PAUL: Your Honor, this is Joshua Paul, P-a-u-l, for Archie Comics. I'd be happy to do that. When we met last week, you had suggested that I contact the outside counsel for Sega at Fenwick and West to see if Sega would agree to participate in a mediation session in this case, and I've done that and received an e-mail from her yesterday afternoon.

Bottom line is that Sega will agree to participate. There are a few wrinkles and conditions. The principal one is that the principals will not attend the mediation session, but they ask that both Mr. Penders and an Archie representative with full settlement authority be available throughout whatever, you know, the designated mediation day to authorize any deal, agreement, should one be reached. Sega cannot commit to do the same for itself, however. The other --

THE COURT: Why not?

MR. PAUL: I haven't spoken with her yet. I'm just relating to you the substance of the e-mail I received from her

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1 yesterday.

2 THE COURT: Yes. I really don't understand that.

3 MR. PAUL: She may -- I don't want to comment because
4 I don't -- I don't know.

5 THE COURT: Okay.

6 MR. PAUL: She's in San Francisco; so it's a bit early
7 for me to reach her, but I will ask her that, if you like, and
8 report back.

9 THE COURT: Yes, I'd like you to ask her and just say,
10 you know, respectfully that it makes no sense to me.

11 MR. PAUL: I'll do that, your Honor.

12 THE COURT: Is she in this court in another matter?

13 MR. PAUL: No, your Honor. Sega has not been sued in
14 another matter in this court. Sega's been sued in, I believe,
15 the Northern District of California. So Sega would be
16 participating voluntarily in mediation.

17 THE COURT: I understand, but they're in Federal Court
18 in San Francisco?

19 MR. PAUL: I believe so. I believe the action is
20 either stayed or dismissed, but I think Mr. Daman can speak to
21 that.

22 THE COURT: Okay. All right.

23 MR. PAUL: Your Honor, may I give you the two other
24 points she made?

25 THE COURT: Sure.

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1 MR. PAUL: She says that she has -- her schedule is
2 such that she cannot participate until, at the earliest, the
3 fourth week of May, but thereafter she'll move anything around
4 to participate.

5 And, finally, that she will try to participate in
6 person, to fly to New York, but would like to reserve the right
7 to participate by phone, if need be.

8 THE COURT: Yes, the latter you can tell her, I
9 reject. She has to participate in person.

10 MR. PAUL: Okay. I'll tell her that.

11 THE COURT: And you know, you could also pass along to
12 her that each of us has busy schedules, the Court does, and I'm
13 sure you two do, as well, and I don't want to go further than
14 that. So we appreciate that she's a successful and busy
15 practitioner, but, you know, this is part of practice.

16 So, yeah, we expect her to be there in person, and I
17 do, in any event, and I'm, as I said before, not understanding
18 what she means by no authority to commit or that's the way it
19 sounded to me.

20 MR. PAUL: I will speak with her as soon as she's
21 available to me today and, if you'd like, can report to you
22 either in writing or with another call, whatever you want.

23 THE COURT: Yeah, maybe you can call this afternoon.
24 What is her name again?

25 MR. PAUL: Her name is Jennifer Kelly, K-e-l-l-y, and

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1 she is at Fenwick and West. I believe it's in the San
2 Francisco office, but I'll check right now. It's either that
3 or Palo Alto.

4 THE COURT: And she's a partner, right?

5 MR. PAUL: She's a partner, yes.

6 THE COURT: Well, okay. Mr. Daman, you're on the
7 phone too, right?

8 MR. DAMAN: I am, your Honor.

9 THE COURT: Did you want to comment?

10 MR. DAMAN: No. I would say that we got these
11 conditions just before the call, and the end of May does not
12 seem unreasonable to us. When it's phrased four weeks into
13 May, it sounds worse than the fact that it's two or three weeks
14 out. I was hoping that the authority thing is a scheduling
15 concern because of the time zones, but I agree with your Honor
16 that, obviously, she would have to have some authority to move
17 this along and it would not make sense for us to have authority
18 but not her.

19 But by and large, I think the end of May or beginning
20 of June we could find dates that would work for everybody, and
21 move that forward. I think it would be a useful use of time.

22 THE COURT: I agree with your assessment of the dates.
23 It sounded worse than it turned out to be. Do you want to call
24 me back this afternoon? That would be fine, just to see where
25 things stand.

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1 MR. PAUL: That's fine. My only hesitation, your
2 Honor, is -- it's Joshua Paul speaking. My only hesitation,
3 your Honor, is that I don't know when I will be able to reach
4 her. I will send her an e-mail immediately. We could -- If
5 you'd like, we could set a temporary time, and then we could
6 confirm it with your chambers so that in case that I haven't
7 heard from her, we don't have to take your time unnecessarily.

8 THE COURT: Okay. Well, it's 10:15 now. Even if it
9 were, let's say, 2:15 Eastern time, that might give you enough
10 time.

11 MR. PAUL: Yes. That would be 11:15 in California.
12 That's fine. If you'd like us to check back in with you at
13 2:15, we'll do that and that's fine.

14 THE COURT: Great.

15 MR. PAUL: Okay.

16 THE COURT: That's great thanks so much.

17 MR. PAUL: Thank you.

18 THE COURT: Bye.

19 (Recess)

20 (Telephone conference resumed; in chambers)

21 THE COURT: Counsel, it's Judge Berman again. How did
22 you make out?

23 MR. PAUL: Your Honor, this is Joshua Paul for the
24 Archie Comics publication. I was able to touch base by e-mail
25 with everyone concerned, including the Sega lawyer, the

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1 mediator and the two attorneys for Mr. Penders; so this is
2 where things are.

3 I reached the Sega lawyer, Ms. Kelly, several times
4 between 7:30 and 8:00 a.m. her time. What she says is she will
5 come in person to New York for the mediation. As for the
6 question of whether Sega's principals or a person from the Sega
7 with authority be available to her by phone during whatever
8 date we choose for the mediation, that is somewhat more
9 problematic. She explains that her principals are in Japan,
10 and even if she were to initiate a call now, in order to find
11 out whether that could be arranged, given the time difference,
12 she said, you know, in the several hours between the time I
13 reached her and the time of this call, she was going to be in
14 court and she just couldn't get -- have a meaningful
15 conversation with them for those -- you know, over the course
16 of those three hours.

17 Finally, as to the date of the mediation, so the
18 mediator, we were looking at the week of June 3. June 3 and
19 June 7, that Monday and Friday, the mediator informs us are not
20 good for him. The Sega lawyer says that she has a hearing in
21 San Francisco on June 7 -- excuse me, on June 6th. She might
22 be able to do a June 5 mediation in New York, but only if she
23 could then get the night flight home. And she just wasn't sure
24 about that; so I don't really have a commitment from her there.

25 I have asked all parties, including Mr. Burn -- excuse

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1 me, the mediator, and Mr. Penders' counsel, how the week of
2 June 10 looks and I haven't yet heard anything back. That's my
3 report.

4 THE COURT: Okay. Okay. So here's what I think.
5 You'll get a date. I am, obviously, not going to interfere
6 with a date that is comfortable to everybody. I am glad that
7 Ms. Kelly is coming. I think that is important.

8 But second, and I think the best way or an excellent
9 way to communicate to Ms. Kelly my thinking about these issues
10 is certainly through you, counsel. You've done a great job in
11 reaching her, but I would also request that you all order
12 copies of the transcript of this morning's phone conference and
13 this one we're having right now, this afternoon's phone
14 conference, because then Ms. Kelly can know directly, so to
15 speak, you know, what my thinking is.

16 And although I'm sure you conveyed it very well, I
17 would like her to know also directly that the first point I've
18 already made is that I'm very appreciative that she's coming to
19 the mediation and, actually, I do think she should be at the
20 mediation.

21 But the second point, which is a little up in the air,
22 I'm not quite understanding what you had to say. There's no
23 sense or no point in having the mediation unless one of two --
24 one of three things. Either her client has to be there, it's
25 not required but that's one way that we can make sure that

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1 someone is there with authority; or, two, that her client or
2 someone from her client is reachable at whatever time the
3 mediation is taking place -- and, by the way, notwithstanding
4 the time change, you know, between New York and Japan, this is
5 done all the time.

6 So it's not like the old days when somebody lived in
7 Europe or the Far East and they were, you know, incommunicado.
8 This is the year 2013. So if somebody wants to be available,
9 there are clearly ways to make sure that that happens, not the
10 least of which is by scheduling the mediation at a better time
11 during the day than at another time, but I don't have to
12 explain to all of you how that can be done, nor do I have to
13 explain it to Ms. Kelly.

14 I'm sure she is probably very familiar with how she
15 gets to be in contact with her clients. So that was the second
16 way. And the third way that we can have an effective mediation
17 is if Ms. Kelly gets full authority herself. Then she doesn't
18 have to have her client at the mediation and, in fact, they
19 don't even have to be available.

20 In connection with the latter points, I want to be
21 very clear that I don't want somebody like Ms. Kelly at the
22 mediation with partial authority. So, for example, she might
23 say, well, I only have authority to agree to \$75 and anything
24 over \$75, I have to find my client, who's not available.
25 That's what I don't want to have happen. I want to be able to

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1 have a meaningful mediation, which, in fact, resolves all of
2 the issues in this case. That's my objective, and I feel very
3 strongly about that.

4 And so that's why I think it might be helpful if you
5 all ordered a copy of the transcript of this proceeding and
6 e-mailed her a copy so she could also e-mail a copy of these
7 transcripts to her clients in Japan so that they also get the
8 understanding of where I'm coming from and what I'm talking
9 about. Is that a possibility? It should be.

10 MR. PAUL: Your Honor, it's Joshua Paul for Archie
11 Comics. Sure. That's not a problem. I agree that that's the
12 most effective way to make sure Miss Kelly and her client
13 understand what you intend, with the understanding that, if
14 it's all right, that we do not order this on a daily basis and
15 just order the transcript whatever the usual turn around is at
16 the usual rate. I think it's a week time. We will be happy to
17 take care of it.

18 THE COURT: It's up to you. It all depends really
19 on -- it's up to you. It will have to be done, of course, in
20 time for Ms. Kelly to get the --

21 MR. PAUL: Of course --

22 THE COURT: -- drift, so to speak, and also for her
23 client to get it. So it will depend on when your mediation is,
24 when you need the transcript, so to speak. In the meantime,
25 you can, if you wouldn't mind, call her again and, you know,

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1 deliver the sum and substance of what we are saying here this
2 afternoon.

3 MR. PAUL: Consider it done.

4 THE COURT: Thanks so much. So I guess what I'll do
5 is wait to hear from you all either by letter, or if you want
6 to call Noam Greenspan, who's my law clerk, and just to tell
7 him when the date of the mediation is.

8 MR. DAMAN: Your Honor, it's Phillip Daman for
9 defendant Ken Penders. I just received, I think, Josh, maybe
10 you received it as well, an e-mail from the mediator who says
11 she's available June 11th, June 12th. She's also available
12 June 13th. So perhaps we can calendar that in after we speak.
13 After this phone call we can coordinate something.

14 Secondly, if we're going to go to mediation -- and,
15 Josh, thank you again for reaching out to Sega and getting
16 Kelly to participate -- that's a long time off. My client
17 is -- he's concerned about the publications. I understand your
18 client's arguments, but we would like to know from the Court if
19 injunctive relief is possible to keep the status quo, where
20 your client's work is not being published until we can resolve
21 the issues in this case.

22 And the second issue is at the original mediation in
23 November of 2012, we specifically asked ACP if he would like
24 Sega to be involved, if that was necessary, and you were very
25 emphatic that Sega was not part of these conversations and Sega

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1 was not to be part of the settlement. And we then proceeded to
2 come to agreement with you, and now a month later, we're
3 bringing Sega back in.

4 Our concern is that, one, we would like to stop any
5 continuing infringement because we'll be publishing a large
6 portion of our client's work. And, of course, out of the main
7 injunction, we're not sure what else we can do unless you would
8 stipulate to that. And the second part is, we're still a
9 little bit unclear as to whether or not you are still opposing
10 the fact that we have an agreement from November 29th. And
11 what's -- now, if we enter into another mediation session with
12 Sega, Sega is not a party to this case. Other than the fact
13 that we mentioned that, I guess, Sega -- you have, Archie will
14 have to indemnify Sega with regard to Mr. Penders' claim, we're
15 not sure what the time is.

16 THE COURT: So as to the latter, you know, without
17 prejudice to anybody's arguments, I think that the mediation
18 will enlighten everybody as to what the other side thinks. It
19 doesn't mean you'll agree, but it should -- The answer to your
20 questions, I don't really think we're going to answer them
21 today on this call, nor do I think it's necessary.

22 So you'll hear whatever those arguments are, I'm sure,
23 at the mediation, and I'm sure you'll be adept at either
24 countering them or whatever.

25 And by the way, as I say, I'm saying this without

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1 prejudice to your maybe needing to argue sometime down the road
2 that they weren't necessarily involved, and we did have an
3 agreement in November. I'm not saying -- So you don't lose
4 that argument is what I really am saying right now.

5 Now, as to the continued infringement, the alleged
6 infringement, for which there are arguments on both sides, in
7 my experience, it's very common for the parties, as you point
8 out, counsel, to stipulate that, you know, we won't take any
9 action until we finish this mediation, which now looks like
10 it's 30 days off or maybe a little more than that.

11 You all ought to be able to work something out between
12 yourselves along those lines, it seems to me. So it's neither
13 of your fault that the mediation can't occur in May, it doesn't
14 sound like. It sounds like the mediator, and now that we have
15 this third party in here, Sega, complicates the selection of a
16 date. I don't think anybody should be prejudiced by the fact
17 that the date is maybe a little longer out than would otherwise
18 be desired. So maybe between the two of you, after I get off,
19 you can work out some sort of standstill agreement that at
20 least takes you through the mediation and --

21 MR. PAUL: Your Honor, it's Joshua Paul for Archie
22 Comics. The events in question took place several weeks ago;
23 so there's really -- I mean, even if -- even if Mr. Daman is
24 correct, that that event changed the status quo, and we don't
25 agree that it did, you know, the horse is out of the barn.

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1 We, we're not prepared to stipulate to a standstill
2 because it's impractical and, for the other reason that we may
3 get an injunction, a preliminary injunction, is not warranted.
4 So I wanted to clarify that -- not to engage in an extended
5 discussion now --

6 THE COURT: Right. But --

7 MR. PAUL: -- but not to mislead the Court, but
8 it's --

9 THE COURT: But what you just said confuses me. So
10 there seems like there's mixed arguments. So if the horse is
11 already out of the barn, that's one thing, and so that's it.
12 Then you'd have to pay up in damages in the event that the
13 other side were to win, but that you're not prepared to enter a
14 standstill for further horses coming out of the barn? I'm
15 certainly not --

16 MR. PAUL: Yes, because -- because we believe that
17 there is no, you know, likelihood of success on the merits.

18 THE COURT: Yeah, but that's a different story.

19 MR. PAUL: The immediacy of harm --

20 THE COURT: That's a different story, counsel, and as
21 to that, that is normally where people do come to a standstill
22 agreement when they're on the verge of a mediation. I can
23 understand your first argument, you say, well, you already did
24 it; so to the extent that you already did it, if it was
25 something improper, you know, you'll hear about it --

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1 MR. PAUL: Of course.

2 THE COURT: -- down the road, but to the extent that
3 you haven't done it, so you are arguing the merits of a
4 preliminary injunction motion is not really interesting or
5 appealing because you've got a mediation right around the
6 corner.

7 And as to that, and as I say, subsequent horses
8 leaving the barn, I would suggest you keep them in the barn and
9 that you do agree to, in good faith, which is what most parties
10 do, to a standstill agreement through the mediation.

11 MR. PAUL: I understand the point that you're making,
12 and I --

13 THE COURT: If you would like --

14 MR. PAUL: Here is not really the time to argue it,
15 but I take your admonition. I understand it.

16 THE COURT: Right. If you would like, I can always
17 enter a stay and that would -- it would be preferable if you
18 and counsel agreed on your own, but --

19 MR. PAUL: When you say a stay, your Honor, I don't
20 understand. A preliminary injunction?

21 THE COURT: No, a stay of all proceedings pending
22 mediation or otherwise resolution, keep the status quo,
23 standstill, nothing happens.

24 MR. PAUL: In a position --

25 THE COURT: I'm just explaining. You said you don't

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1 understand. I'm explaining. No more horses out of the barn.
2 Anything unclear about what the stay would provide? It would
3 mean stay in place, no more horses out of the barn.
4 Preferable if you do that voluntarily.

5 MR. PAUL: Your Honor, I don't mean to be difficult,
6 but it sounds to me like you're describing a restraint on
7 Archie's behavior involuntarily.

8 THE COURT: Then you could go to the Court of Appeals
9 and the Supreme Court, if you don't like what I do. You could
10 go up there either as appeal or mandamus, whatever you like, if
11 you don't like the actions that I might take. You know, I'm
12 not trying to curtail any of your options.

13 I am trying to say that, in good faith, nine out of
14 ten people and their clients would say, all right, we won't let
15 any more horses out of the barn because we have a mediation
16 pending. A mediation, I might add, that your colleague thinks
17 is even unnecessary because he thinks you've already agreed to
18 a settlement, and he has at least a colorable argument that
19 that's true. So just so you know where I'm coming from, that's
20 all the places I'm coming from.

21 MR. PAUL: I definitely understand where you're coming
22 from, your Honor.

23 THE COURT: So if you want to go argue the First
24 Amendment in the Court of Appeals, be my guest.

25 MR. PAUL: Your Honor, I'm not suggesting for this --

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1 That's fine. I understand.

2 THE COURT: You get it.

3 MR. PAUL: I understand what you're saying.

4 THE COURT: You get it.

5 MR. PAUL: And all I ask is that before -- you know,
6 if we decide that we cannot stipulate, that before you enter a
7 stay or an injunction, you permit us to have an opportunity to
8 submit papers, we can do it very quickly, and to hear the
9 issues about a bond being posted, as well as, you know, all of
10 the issues that you would need to take into account before you
11 issue an injunction.

12 And I'm not suggesting we're going to be there, but I
13 just want to note, as a placeholder, that that's what we would
14 hope and expect, your Honor.

15 THE COURT: But you confuse me sometimes, counsel. I
16 tell you why, because we're all talking about resolution and
17 mediation, at least that's what I'm talking. You're talking
18 all the time about more litigation, papers, bonds, motions,
19 hearing, want to be heard, First Amendment, all this stuff.
20 They're antithetical.

21 If you go into a mediation, you know, with a motion
22 and your brief in your back pocket, then you won't really have
23 a clear head for the mediation. And, remember, counsel has
24 pointed out, and I think he's got at least a decent argument,
25 that he thinks this case has already been settled, and he

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1 thinks that no one ever thought that Sega even needed to be
2 involved back in the day, but we're past that. So you have to
3 be able to flexibly move to the mode of resolution --

4 MR. PAUL: We are.

5 THE COURT: -- in good faith.

6 MR. PAUL: We are.

7 THE COURT: And if you do that, you and counsel will
8 obviate the need for me to have to do anything.

9 MR. PAUL: That's fine. May I just say one thing
10 before we ring off?

11 THE COURT: Absolutely.

12 MR. PAUL: I think that the assumption that everybody,
13 that your Honor may be making, that the results of the
14 mediation will involve putting more consideration onto the
15 table by the Archie, slash, Sega group. And as I tried to
16 explain the last time we were in court last week, we believe,
17 in light of what your Honor called a new theory, which is just
18 a -- which is not a new theory, it's one that prior counsel did
19 not appreciate, that there really is no liability here.

20 So I don't -- I've expressed this to Mr. Daman, and so
21 we are entering in -- our objective in the mediation is to
22 explain to the mediator and to counsel for Mr. Penders what the
23 applicable law is. If we can reach a resolution that would
24 involve, you know, some additional points of concession on
25 Archie's part, we're more than happy to explore that. But I

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1 just did want to make clear that, you know, what -- the way in
2 which my client is approaching this upcoming mediation.

3 THE COURT: So my father, who was not a lawyer, he
4 would say, if he was sitting here and heard you, he would say,
5 well, that guy is just bargaining in advance and negotiating in
6 advance of the mediation. So you save it for the mediation,
7 but here's this caveat. It's possible -- I mean, anything is
8 possible, but it's possible that you and your client's recourse
9 may have to be, you know, against this prior lawyer who took
10 this case in a totally different direction, according to what
11 you're saying.

12 And if you don't like where it's leading you, it may
13 be that your recourse is against him and not against your
14 colleague on the phone right now. That's just a theory, while
15 we're all, you know, spitting out some theories.

16 MR. PAUL: All right, your Honor.

17 THE COURT: So you just, and I know you will, in good
18 faith, get together and set this date. This is a strong
19 argument for why this date for mediation should be sooner
20 rather than later, and let's see if we can't get this thing
21 wrapped up. All right?

22 MR. PAUL: Thank you very much.

23 THE COURT: I'm going to get a letter?

24 MR. DAMAN: I hate to prolong this. Just two quick
25 points.

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1 THE COURT: You know, when lawyers start with "I hate"
2 to do something, I usually say, well, then why do it, if you
3 really hate to do it?

4 MR. DAMAN: I take pleasure in defending my client's
5 rights in saying the following, if your Honor will allow.
6 Mr. Penders did bring up the issues of injunction before the
7 first mediation, after the mediation was concluded, and for
8 many months with opposing counsel since the conclusion of that
9 first mediation, when we came, arguendo, to an agreement.

10 THE COURT: Right. All right.

11 MR. DAMAN: We're very concerned that if there is not
12 a timetable put on to when to have a possible stay that may be
13 issued or we're able to argue the merits of a preliminary
14 injunction, that, as you said, more horses will leave the barn.

15 Mr. Penders is continuing had bend over backwards to
16 work with ACP, and yet, ACP continues to release his works, of
17 course, which damage is being tabled to later prevail, but to
18 continue to wait with its production schedule, which ACP has
19 shared with us and we discovered online, to contact ACP
20 distributors, which we do, to collect money on behalf of our
21 clients when simply a stay put in place would save us further
22 expense.

23 We've been dealing with this for the best part of
24 seven months. That's why counsel's previous comments and the
25 comments on this call doesn't seem like it's very likely that

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1 they're going to stipulate to the agreement that wave been
2 asking for for many, many months. If we could time block this
3 and put a time limit on this as to when counsel and I can come
4 to such an agreement or ask the Court for a stay order or
5 preliminary injunction, that might be helpful, considering
6 there's another month timeline before we can possibly mediate.

7 THE COURT: Well, I'll say the same thing to you as I
8 said to counsel. You're either on the mediation path or you're
9 on the litigation path. Right now, we're on the mediation
10 path, I think, without anybody waiving any rights that they
11 might otherwise have. So why don't you and counsel see how far
12 you can get.

13 The best thing you could do is come up with a May date
14 or an early date for this mediation, you know, this week or
15 next week, you know, something like that. That would be the
16 easiest way to accomplish a lot of objectives, but I'll leave
17 it to you.

18 MR. PAUL: We will try, as I told everyone this
19 morning. What the Sega lawyer says, she's just not available
20 until the last --

21 THE COURT: Yes, this Sega lawyer is the busiest
22 lawyer in California and New York, from what I gather, not
23 available. So that's -- I'm not saying that's happening here,
24 but sometimes that's a convenient thing to tell a judge, that
25 I'm not available because I have such a busy practice.

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1 MR. PAUL: Which is why it's so important that we
2 order the transcript of these two phone conferences.

3 THE COURT: It certainly is.

4 MR. PAUL: And maybe if, since it's important, that we
5 get it there early, maybe the parties will agree to just share
6 the cost of --

7 THE COURT: Overnight?

8 MR. PAUL: -- of an overnight?

9 THE COURT: I would, if I were you.

10 MR. PAUL: Very well. So I will ask --

11 MR. DAMAN: Your Honor?

12 THE COURT: All right. That's enough.

13 MR. DAMAN: Perhaps Sega's counsel can appear
14 telephonically or via Skype --

15 THE COURT: Whatever. You --

16 MR. DAMAN: -- for Sega counsel. Again, we asked
17 about this in November. We were clearly told ACP --

18 THE COURT: I got it. Now we're just going over the
19 same old story again.

20 MR. DAMAN: I guess the question is, can she appear
21 telephonically?

22 THE COURT: Well, I don't know the answer to that,
23 counsel. That's something that you and counsel can work out
24 together. Okay?

25 MR. DAMAN: Okay.

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TELEPHONE CONFERENCE

1 THE COURT: Okay. Thanks.

2 MR. PAUL: Thank you, your Honor.

3 THE COURT: You bet.

4 (Adjourned)

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